

**PATENT**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

on January 14, 2004  
(Date of Deposit)

MOTOROLA, INC.  
Name of applicant, assignee, or Registered Rep.

[Signature] January 14, 2004  
Signature Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Rosenstock et al.	Examiner:	TBA
Serial No.:	10/676,744	Group:	TBA
Filed:	09/30/2003	Case No:	IS01409MCG
Entitled:	METHOD AND APPARATUS FOR LIMITING STANDBY SUBNET MANAGERS		

**PETITION UNDER 37 C.F.R. § 1.47(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313

Sir:

Applicants hereby petition the United States Patent & Trademark Office to make application for patent on behalf of and as agent for Peter Duthie on the ground that Peter Duthie cannot be reached after a diligent effort has been made to do so. Applicants also hereby petition the United States Patent & Trademark Office to make application on behalf of and agent for Richard Dykiel and Richard Lagueux on the grounds that Richard Dykiel and Richard Lagueux have refused to accept any application papers and have refused to sign the Declaration.

01/21/2004 HVUONG1 00000128 502117 10676744

02 FC:1460 130.00 DA

Attached is a Declaration by V. Lynn Webb, who mailed copies of the Application, the Drawings, and the Declaration and Power of Attorney to inventor Peter Duthie on October 2, 2003 via Federal Express and subsequently spoke with the Federal Express agent who attempted to deliver the package in Australia. Also attached is a Declaration by Kevin D. Wills, who made a diligent effort to contact Peter Duthie in the course of drafting the patent application. As is detailed in the Declaration by V. Lynn Webb and Kevin D. Wills, Peter Duthie's whereabouts are unknown after a bona fide effort has been made to contact Peter Duthie.

Also attached is a Declaration by Kevin D. Wills, who made a bona fide and diligent attempt to present a copy of the application papers (including specification, claims, drawings and Declaration) to Richard Dykiel and Richard Lagueux for signature. Both Richard Dykiel and Richard Lagueux refused delivery of said application papers and refused to sign said Declaration per instruction from their corporate counsel. The Declaration by Kevin D. Wills contains a copy of the express refusal by both Richard Dykiel and Richard Lagueux to accept delivery of the application papers and to sign the Declaration as required by MPEP 409.03(d).

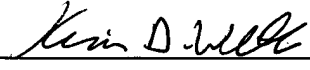
Also attached hereto are copies of an Assignment executed by the other inventor of the invention assigning his interests in the invention to Motorola, Inc., ("Motorola") and a Declaration and Power of Attorney executed by the other inventor authorizing Motorola to represent him in regard to the prosecution of this application before the United States Patent and Trademark Office.

Therefore, applicants respectfully request that their Petition be granted and that they be authorized to make application for patent on behalf of and as agent for Peter Duthie, Richard Dykiel and Richard Lagueux.

Please charge Deposit Account 502117 for any required fees such as the miscellaneous petition fee under 37 CFR 1.17(h).

Respectfully submitted,  
Harold N. Rosenstock

Mail all correspondence to:  
CUSTOMER NO. 23330

By:   
Kevin D. Wills  
Attorney for Applicant  
Registration No. 43,993  
Phone: 602-952-4364  
Fax: 602-952-4376



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Rosenstock et al.	Examiner:	TBA
Serial No.:	10/676,744	Group:	TBA
Filed:	09/30/2003	Case No:	IS01409MCG
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**DECLARATION OF KEVIN D. WILLS UNDER 37 C.F.R. § 1.47**

I, Kevin D. Wills, hereby state as follows:

1. I am a Patent Attorney in the Law Department at Motorola, Inc. ("Motorola"), in Phoenix, Arizona. My responsibilities include working with Motorola employees and non-Motorola employees to prepare and prosecute patent applications for Motorola.
2. On September 6, 2003, I sent an email to the last known email address of Peter Duthie ([pduthie@warlordsofbeer.com](mailto:pduthie@warlordsofbeer.com)) notifying him of his possible inventorship on a patent application. As of the date of this Declaration, I have received no response to this email. A copy of the email is attached as Exhibit 1.
3. On or about September 4, 2003, I spoke with two former co-workers of Peter Duthie, Jeff Wise and Steve Hauser, both of which had no contact data for Peter Duthie.
4. On September 9, 2003, I spoke with two former co-workers of Peter Duthie, Richard Dykiel and Richard Lagueux, both of which had no contact data for Peter Duthie.
5. On or about September 22, 2003, I spoke with a former co-worker of Peter Duthie, Nehru Bhandaru, and he had no contact data for Peter Duthie.

6. On September 28, 2003, I sent an email to Peter Duthie's former boss (at the now defunct Paceline Inc.), Brian Rich (presently a Motorola employee), requesting contact information for Peter Duthie. Brian Rich replied in an email that he does not have Peter Duthie's current contact information. The email is attached as Exhibit 2. In a phone call with Brian Rich later that same day, Brian Rich suggested I talk to the former Director of Software at Paceline Inc. (Rod Gregoire) as to Peter Duthie's whereabouts. Brian Rich also indicated that he believed Peter Duthie moved back to Australia at the beginning of 2003.
7. On September 29, 2003, a former co-worker and present co-inventor of Peter Duthie's, Hal Rosenstock, contacted me with his last known contact information for Peter Duthie including an address and phone number. This email is attached as Exhibit 3.
8. On September 29, 2003, I attempted to contact Peter Duthie at his last known phone number (617 795-0596) given to me by Hal Rosenstock. The phone number was disconnected with no forwarding number given.
9. On September 29, 2003, I spoke with Rod Gregoire and he indicated that the last known address given to me by Hal Rosenstock (25 Elliot Street, Newton, MA) was not correct. Rod Gregoire gave me Peter Duthie's last known address in Australia, that is, 12 Namara Place, Engadine, New South Wales 2233, AUSTRALIA. I forwarded this address to my Administrative Assistant, V. Lynn Webb so copies of the patent application, Declaration and Assignment could be mailed to him.
10. On September 30, 2003, I performed an Internet search and was unable to locate a phone number or address of Peter Duthie in Australia or the U.S.
10. Based on my exhaustive search, I believe that further efforts to contact Peter Duthie would be futile.
11. Enclosed please find copies of the emails indicating my attempts to locate Peter Duthie.

I declare under penalty of perjury that the statements made by me in this Declaration are true and correct.

Respectfully submitted,

Kevin D. Wills  
KEVIN D. WILLS  
MOTOROLA, INC.  
Patent Attorney  
Law Department

DATE: 1-14-04

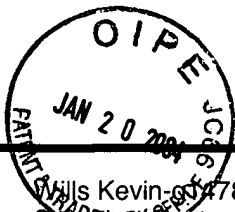


Exhibit 1

Wills Kevin-g14781

---

**From:** Wills Kevin-g14781  
**Sent:** Saturday, September 06, 2003 12:10 PM  
**To:** 'pduthie@warlordsofbeer.com'  
**Subject:** Paceline patents

Peter:

My name is Kevin Wills and I am a patent attorney with Motorola. I am working on some patent applications that might pertain to your work at Paceline. You may be an inventor on one more of these patent applications. I was hoping to set up a time where I could give you a call and discuss this with you. Time is of the essence in this matter.

Please let me know if a time that would be good to contact you and a phone number where I might call. I appreciate your cooperation on this.

Regards,

Kevin Wills  
Patent Attorney, Motorola, Inc.  
(602) 952-4364

Exhibit 2

Wills K vin-g14781

---

**Fr m:** Rich Brian-Q16329  
**Sent:** Sunday, September 28, 2003 6:19 PM  
**To:** Wills Kevin-g14781  
**Subj ct:** RE: Paceline patents

Kevin

I do not have Peter's current contact info.

Brian

-----Original Message-----

**Fr m:** Wills Kevin-g14781  
**Sent:** Sunday, September 28, 2003 4:57 PM  
**T :** Rich Brian-Q16329  
**Subject:** Paceline patents

Brian:

I am filing some of the Paceline patents on Monday, September 29th. I need the last known address of Peter Duthie (US or Australia). It doesn't have to be his current address (unless you have that). Do you have this or know someone who might. I've already checked with Hal Rosenstock, Jeff Wise, Steve Hauser, Nehru Bhandaru, Richard Dykiel, Mark Stewart and Richard Lagueux. I need this ASAP (Monday morning). Let me know if you cannot find it or don't know anyone who might have it.

Thanks,

Kevin



Exhibit 3

Wills Kevin-g14781

---

Fr m: Wills Kevin-g14781  
Sent: Monday, September 29, 2003 1:17 PM  
T : Webb Lynn-a11111  
Subject: FW: Inventors

Lynn:

Here is Peter Duthie's last known address for IS01409MCG. The inventors I listed for IS01415MCG are fine. Hal Rosenstock and Nehru Bhandaru. So, that should be all we need to file.

Thanks,

Kevin

-----Original Message-----

From: Hal Rosenstock [mailto:hnrose@earthlink.net]  
Sent: Sunday, September 28, 2003 4:58 PM  
To: Wills Kevin-g14781  
Subject: RE: Inventors

Peter Duthie's last US address was:

25 Elliot Street  
Newton MA 02461-1604

617 795 0596

-----Original Message-----

From: Wills Kevin-g14781 <Kevin.Wills@motorola.com>  
Sent: Sep 28, 2003 6:56 PM  
To: 'Hal Rosenstock' <hnrose@earthlink.net>  
Subject: RE: Inventors

OK, thanks, I'll give him a call

-----Original Message-----

From: Hal Rosenstock [mailto:hnrose@earthlink.net]  
Sent: Sunday, September 28, 2003 3:53 PM  
To: Wills Kevin-g14781  
Subject: RE: Inventors

Rod Gregoire is his name. Here's his contact info:  
4 Byam Rd  
Chelmsford, MA 01824  
(978) 256-3855

-----Original Message-----

From: Wills Kevin-g14781 <Kevin.Wills@motorola.com>  
Sent: Sep 28, 2003 6:36 PM  
To: 'Hal Rosenstock' <hnrose@earthlink.net>  
Subject: RE: Inventors

Yes, it was Rod something? He was the software director. I have an email out to Brian Rich already. I just need to get something before 12:00 pm AZ time tomorrow.

Thanks,

Kevin



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Rosenstock et al.	Examiner:	TBA
Serial No.:	10/676,744	Group:	TBA
Filed:	09/30/2003	Case No:	IS01409MCG
Entitled:	METHOD AND APPARATUS FOR LIMITING STANDBY SUBNET MANAGERS		

---

**DECLARATION OF KEVIN D. WILLS UNDER 37 C.F.R. § 1.47**

I, Kevin D. Wills, hereby state as follows:

1. I am a Patent Attorney in the Law Department at Motorola, Inc. ("Motorola"), in Phoenix, Arizona. My responsibilities include working with Motorola employees and non-Motorola employees to prepare and prosecute patent applications for Motorola.
2. On September 4, 2003, I contacted (by phone) both Richard Dykiel and Richard Lagueux, both of whom currently work for Sun Microsystems, Inc. I informed them that they were inventors on the above patent application. I inquired if they would review the claims, specification and drawings, and sign a Declaration and Assignment pertaining to the above patent application. Both Richard Dykiel and Richard Lagueux clearly understood exactly what they were being asked to review and sign. Both Richard Dykiel and Richard Lagueux said they would have to consult with their in-house counsel first.
3. On September 9, 2003, I was contacted by phone by Bernice Chen, Assistant General Counsel for Sun Microsystems, Inc. Bernice Chen indicated that both Richard Dykiel and Richard Lagueux would not be cooperating in pursuing the above patent application, both Richard Dykiel and Richard Lagueux would not be signing the Declaration and Assignment pertaining to the above patent application, and NOT to send copies of the claims, specification and drawings, or the Declaration and Assignment to Richard Dykiel, Richard Lagueux or herself. Bernice Chen also indicated

I was to have no further contact with Richard Dykiel or Richard Lagueux regarding this patent application.

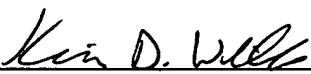
4. On September 10, 2003, I received an express written refusal (by email) from both Richard Dykiel and Richard Lagueux to cooperate in pursuing the above patent application, which includes a refusal to receive copies of the claims, specification and drawings, and a refusal to sign the Declaration and Assignment. The emails are attached.

5. On September 17, 2003, I received an email from Bernice Chen giving me the current addresses of both Richard Dykiel and Richard Lagueux, and implicitly confirming my acknowledgment of her request to have no further contact with Richard Dykiel and Richard Lagueux. The email is attached.

6. Enclosed please find copies of the emails indicating my attempts to gain the cooperation of Richard Dykiel and Richard Lagueux in the pursuit of the above patent application.

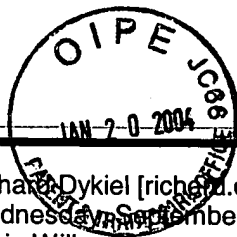
I declare under penalty of perjury that the statements made by me in this Declaration are true and correct.

Respectfully submitted,

  
\_\_\_\_\_  
KEVIN D. WILLS  
MOTOROLA, INC.  
Patent Attorney  
Law Department

DATE: 1-14-04

Wills K vin-g14781



From: Richard Dykiel [richard.dykiel@sun.com]  
S nt: Wednesday, September 10, 2003 6:22 AM  
To: Kevin.Wills  
Cc: Bernice Chen; Diana Klashman; Richard Lagueux; Richard Dykiel  
Subj ct: Motorola patent application

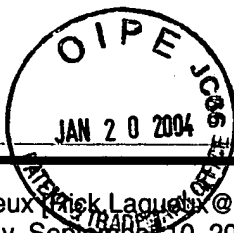
Kevin,

In compliance with my company's decision, I must inform you that I will not be cooperating to complete the patent application you contacted me for.

Please contact Bernice Chen, the Sun patent attorney following this case, for any additional question.

Best regards,  
Richard Dykiel.

Wills-Kevin-g14781



Fr m: Rick Lagueux [Rick.Lagueux@Sun.COM]  
S nt: Wednesday, September 10, 2003 4:13 AM  
T : Kevin Wills  
Subject: Re: about our phone conversation

Sigh. I've been railroaded too. I've been told in no uncertain terms that I am not allowed to assist Motorola in this effort. So please also do not send me any of the materials.

Sorry.

Rick

Richard Dykiel wrote:

> Kevin,  
>  
> In our phone conversation of yesterday, you expressed an interest in  
> having me review, as one of the co-authors, the patent application you  
> are drafting for Motorola.  
>  
> I hereby confirm our verbal agreement that you should NOT send me any  
> materials pertaining to that patent application, or any other Motorola  
> property, before either me or Sun's lawyers give the go-ahead to my  
> participation.  
>  
> You will be contacted shortly by Bernice Chen, a Sun patent attorney.  
>  
> Best regards,  
> Richard Dykiel.  
>

--

Rick.Lagueux@Sun.com  
Subnet Management Team Lead  
Sun Microsystems VSP HEES  
office: 781-442-6904  
cell: 603-765-6593



**Wills Kevin-g14781**

---

**Fr m:** Bernice Chen [Bernice.Chen@Sun.COM]  
**Sent:** Wednesday, September 17, 2003 4:11 PM  
**To:** Wills Kevin-g14781  
**Subject:** Re: Motorola patent application

Kevin,

Below are the inventor information you have requested.

-----  
Richard A. Lagueux  
11 Pinewood Rd.  
Hudson, NH 03051  
Citizenship: United States of America

-----  
Richard Dykiel  
29, Ethan Allen dr.  
Acton, MA 01720  
Citizenship: French

-----  
Regards,

Bernice

Wills Kevin-g14781 wrote:

Bernice:

It was nice chatting with you yesterday. The only thing I will need to follow through with what we discussed are the full names, home addresses and citizenship of both Richard Dykiel and Richard Lagueux. I wanted to get this information through you and respect your wishes that I have no further contact with these two individuals. Thanks for your help.

Regards,

Kevin Wills  
Patent Attorney  
Motorola

9/22/2003

-----Original Message-----

From: Richard Dykiel [<mailto:richard.dykiel@sun.com>]  
Sent: Wednesday, September 10, 2003 6:22 AM  
To: Kevin.Wills  
Cc: Bernice Chen; Diana Klashman; Richard Lagueux; Richard Dykiel  
Subject: Motorola patent application

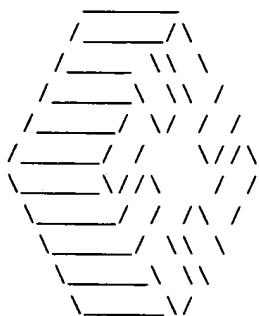
Kevin,

In compliance with my company's decision, I must inform you that I will not be cooperating to complete the patent application you contacted me for.

Please contact Bernice Chen, the Sun patent attorney following this case, for any additional question.

Best regards,  
Richard Dykiel.

--



Bernice B. Chen  
Assistant General Counsel  
Sun Microsystems, Inc.  
Mail Stop USUN05-204  
910 Hermosa Court  
Sunnyvale, CA 94085-4199  
(408)720-4842 (x6-4842)  
(408)720-2006 (x6-2006)  
[bernice.chen@sun.com](mailto:bernice.chen@sun.com)

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**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Rosenstock et al.	Examiner:	TBA
Serial No.:	10/676,744	Group:	TBA
Filed:	09/30/2003	Case No:	IS01409MCG
Entitled:	METHOD AND APPARATUS FOR LIMITING STANDBY SUBNET MANAGERS		

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**DECLARATION OF V. LYNN WEBB UNDER 37 C.F.R. § 1.47**

I, V. Lynn Webb, hereby state as follows:

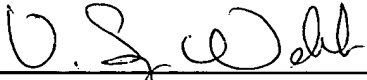
1. I am an Administrative Assistant in the Law Department at Motorola, Inc. ("Motorola"), in Phoenix, Arizona. My responsibilities include obtaining the signatures of current Motorola employees, former Motorola employees and non-employees for the Declaration and Power of Attorney and for the Assignment documents with respect to patent applications filed on their behalf by Motorola as assignee of the inventions therein.
2. On October 2, 2003, I mailed, via Federal Express International, a package containing documents for his signature, under label number S115289411, tracking number 790919208820 to Peter Duthie at his last known address, that is, 12 Namara Place, Engadine, New South Wales 2233, AUSTRALIA.
3. The package included copies of the Application, Drawings, and a Declaration with Power of Attorney, and an Assignment and Agreement for his signature with respect to patent application serial no. 10/676,744, attorney docket no. IS01409MCG, filed September 30, 2003.
4. On October 7, 2003, at 4:05pm, the package under tracking number 790919208820 was delivered to Peter Duthie at the address in Australia.



5. As of today's date, the executed documents have not been received by Motorola nor has Mr. Duthie corresponded with the Motorola Law Department in any way.
6. Enclosed please find copies of the Federal Express Track Shipments Detailed Results indicating our attempt to locate Peter Duthie.

I declare under penalty of perjury that the statements made by me in this Declaration are true and correct.

Respectfully submitted,

  
\_\_\_\_\_  
V. LYNN WEBB  
MOTOROLA, INC.  
Senior Administrative Assistant  
Law Department

DATE: January 14, 2004



Close Window

Track Shipments  
Detailed Results

Print

Tracking number 790919208820  
Signed for by .PETER  
Ship date Oct 2, 2003  
Delivery date/Time Oct 7, 2003 4:05 pm

Reference number IS01409MCG  
Delivered to Receipt/Frnt desk  
Delivery location ENGADINE, NEW  
SOUTH WALES AU  
Service type Priority Envelope

Date/Time	Status	Location	Comments
Oct 7, 2003	4:05 pm Delivered	ENGADINE, NEW SOUTH WALES AU	
	11:30 am On FedEx vehicle for delivery	ALEXANDRIA AU	
	7:08 am Package status	ALEXANDRIA AU	Released for Delivery
	7:07 am Arrived at FedEx Destination Location	ALEXANDRIA AU	
Oct 3, 2003	10:26 am Package status	HONOLULU HI	In transit
	10:20 am Left FedEx Ramp	HONOLULU HI	
	7:39 am Arrived at FedEx Ramp	HONOLULU HI	
	7:39 am Package status	HONOLULU HI	Package in FedEx location
	6:55 am Left FedEx Sort Facility	LOS ANGELES CA	
	4:19 am Left FedEx Sort Facility	OAKLAND CA	
	4:12 am Arrived at Sort Facility	LOS ANGELES CA	
	12:36 am Left FedEx Sort Facility	OAKLAND CA	
Oct 2, 2003	9:37 pm Left FedEx Sort Facility	OAKLAND CA	

[Track more shipments](#)

Email your detailed tracking results (optional)

Enter your email, submit up to three email addresses (separated by commas), add your message (optional), and click **Send email**.

From   
To

Add a message to this email.

[Send email](#)

Close Window

Orig. ID: ZSYA  
 From: V. LYNN WEBB (602) 952-4362  
 MOTOROLA, INC  
 3102 North 56th Street  
 Suite 56-238  
 PHOENIX  
 AZ 85018 (US)



**FedEx.**

30.55(h)

To: Peter Duthi 61295206674

IRS/EIN:  
 SHIP DATE: 02OCT03  
 WEIGHT: 1 LBS

12 Namara Place

Engadine, New South Wales 2233 AUSTRALIA (AU)

Description  
 legal documents

Country Mfg.

CUSTOM VALUE: 1.00 USD  
 CARRIAGE VALUE: 0.00 USD

Ref: IS01409MCG  
 Signature: V. LYNN WEBB

BILL T/C: S 115289411  
 BILL D/T: S 115289411

TRK # 7909 1920 8820 FORM 0430

FedEx IP ENVELOPE

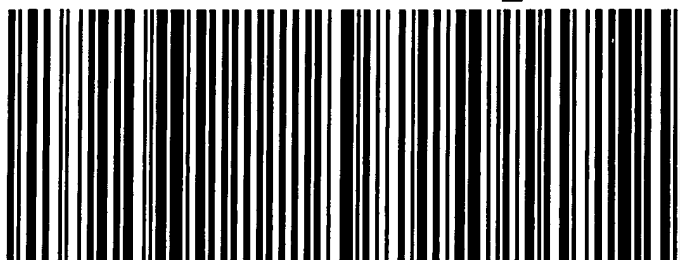
2233

AU

W7 SYDA

SYD

PM



**Shipping Label: Your shipment is complete** This shipping label constitutes the air waybill for this shipment.

**Cancel shipment** **Edit shipment information** **Process another shipment** **Repeat last shipment**

1. Use the "Print" feature from your browser to send this page to your laser or inkjet printer. Fold the printed page along the horizontal line.

2. Place 2 originals of the shipping label in the pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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FedEx won't be liable for damage, loss, delay, shortage, misdelivery, nondelivery, misinformation or failure to provide information in connection with shipments of cash, currency or other prohibited items or in instances beyond our control, such as acts of God, perils of the air, weather conditions, mechanical delays, acts of public enemies, war, strike, civil commotion, or acts or omissions of public authorities (including customs and health officials) with actual or apparent authority. **NO WARRANTY.** We make no warranties, express or implied. **CLAIMS FOR LOSS, DAMAGE OR DELAY.** ALL CLAIMS MUST BE MADE IN WRITING AND WITHIN STRICT TIME LIMITS. SEE OUR TARIFF, APPLICABLE FEDEX SERVICE GUIDE, OR STANDARD CONDITIONS OF CARRIAGE FOR DETAILS. The Warsaw Convention provides specific written claims procedures for damage, delay or non-delivery of your shipment. Moreover, the interpretation and operation of the Warsaw Convention's claims provisions may vary in each country. Refer to the Convention to determine the claims period for your shipment. The right to damages against us shall be extinguished unless an action is brought within two years, as set forth in the Convention. FedEx is not obligated to act on any claim until all transportation charges have been paid. The claim amount may not be deducted from the transportation charges. If the recipient accepts the shipment without noting any damage on the delivery record, FedEx will assume the shipment was delivered in good condition. In order for us to consider a claim for damage, the contents, original shipping carton and packing must be made available to us for inspection. **MANDATORY LAW.** Insofar as any provision contained or referred to in this Air Waybill may be contrary to any applicable international treaties, laws, government regulations, orders or requirements such provisions shall remain in effect as a part of our agreement to the extent that it is not overridden. The invalidity or unenforceability of any provisions shall not affect any other part of this Air Waybill. Unless otherwise indicated, FEDERAL EXPRESS CORPORATION, 2005 Corporate Avenue, Memphis, TN 38132, USA, is the first carrier of this shipment. Email address located at [www.fedex.com](http://www.fedex.com).